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In re Application of :
BERLIN, Kurt :
Application No. 10/048,182 :
PCT No.: PCT/DE00/02595 : **DECISION ON PETITION**
Int. Filing Date: 27 July 2000 : **UNDER 37 CFR 1.181**
Priority Date: 28 July 1999 :
Attorney Docket No.: 81801 :
For: METHOD FOR CHARACTERIZING :
NUCLEIC ACID FRAGMENTS :

This is a decision on applicants' "Request under 37 CFR 1.8(b) for Withdrawal of Holding of Abandonment," which is being treated as a petition to withdraw a holding of abandonment under 37 CFR 1.181 filed in the Patent and Trademark Office (PTO) on 18 March 2004. No petition fee is not required.

BACKGROUND

On 27 July 2000, applicants filed international application no. PCT/DE00/02595 which claimed a priority date of 28 July 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 08 February 2001. A Demand was filed with the International Preliminary Examining Authority. As a result, the deadline for entry into the national stage in the United States expired 30 months from the priority date, on 28 January 2002.

On 28 January 2002, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee; a copy of the international application; and a preliminary amendment.

On 03 April 2002, the United States Designated/Elected Office mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 01 March 2004, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT indicating, in effect, that the application was abandoned for failure to respond to the Notification of Missing Requirements mailed 03 April 2002.

On 18 March 2004, applicants filed the present petition requesting, in effect, that the holding of abandonment in the case be withdrawn on the grounds that applicants filed a response on 28 May 2002. The petition was accompanied by: a copy of a communication regarding submission of declaration; a copy of the combined declaration and power of attorney allegedly filed 28 May 2002; and an unstamped "postcard" receipt.

DISCUSSION

A review of the application file reveals that the original declaration allegedly filed 28 May 2002 under 37 CFR 1.8 is not located therein.

37 CFR 1.8 states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.

The evidence filed with the petition is convincing that a response including a combined declaration power of attorney was filed with a certificate of mailing dated 28 May 2002. The response filed 28 May 2002 was timely to the Notification of Missing Requirements mailed 03 April 2002. Additionally, applicant has: (1) informed the Office of the previous mailing of the correspondence promptly after becoming aware that the Office did not receive the items mailed 28 May 2002, (2) supplied copies of the previously mailed correspondence; and (3) Edward M. Kriegsman attests that, "on personal knowledge that the above-mentioned reply was mailed in accordance with 37 CFR 1.8 on May 28, 2002 . . . " Thus, it is considered appropriate to withdraw the holding of abandonment.

Accordingly, it is considered appropriate to withdraw the holding of abandonment.

CONCLUSION

As construed above, applicants' petition under 37 CFR 1.181 to withdraw the holding of abandonment is GRANTED.

The Notification of Abandonment mailed on 01 March 2004 is hereby VACATED.

The application has an international filing date of 27 July 2000 under 35 U.S.C. 363, and a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of 18 March 2004.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing.



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